

REMARKS

The final Office Action dated October 14, 2009 has been received and its contents carefully noted. Claims 46-96 remain pending in the application. The Applicants are concurrently filing a Notice of Appeal.

Applicants respectfully request entry of the amendments to the Specification and independent claim 80 submitted herewith. No new subject matter has been added. Applicants respectfully submit that the amendment to claim 80 should be entered as the amendment 1) places the application either in condition for allowance or in better form for appeal; 2) raises no new issue of new matter; and 3) presents no new issues requiring further consideration or search. *See* 37 CFR 1.116; see also *Manual of Patent Examining Procedure (M.P.E.P.)*, 8th Ed. § 714.12-13.

In particular, independent claim 80 has been amended to recite “A program product comprising a computer memory containing instructions recorded thereon, operable on a computer for the automated generation and serving of aggregate creatives, the instructions operable to be executed by the computer to perform the steps of” To provide additional support for this amendment, the Specification has been correspondingly amended to recite:

A memory may be connected to the processor and store instructions to control the operation of the processor. . . . Embodiments include a program product comprising a storage device or memory containing instructions operable on a computer for automated generation of aggregate creatives, the instructions operable with the computer to perform the processes of the present invention.

Support for this amendment may be found, for example, in original claims 8 and 30 (now cancelled), which recited: “A system for the automated generation of aggregate creatives, comprising: a processor; a memory connected to the processor and storing instructions to control the operation to perform the steps of” According to the *M.P.E.P.*, “[t]he claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not disclosed in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter.” *M.P.E.P.* §2163.06 I (citing *In re Benno*, 768 F.2d 1340, 226 USPQ 683 (Fed. Cir. 1985)). Therefore, the specification has been properly amended to provide further antecedent basis for the claimed subject matter.

In view of the amendment to claim 80 above, the claims no longer recite a “computer-readable storage device.” As such, the objection to the Specification for failing to provide

sufficient antecedent basis for the phrase “computer-readable storage device” (*see* final Office Action, p. 2) has been rendered moot and should be withdrawn.

In addition, because claim 80 now recites “a computer memory,” claim 80 recites sufficient physical structure and thus claims statutory subject matter under 35 U.S.C. § 101. According to the *M.P.E.P.*, “When a computer program is recited in conjunction with *a physical structure, such as a computer memory*, Office personnel should treat the claim as a product claim.” *M.P.E.P.* §2106.01 I. Accordingly, the rejection of independent claim 80 and its dependent claims 81-96 under 35 U.S.C. § 101 should be withdrawn.

Applicants respectfully submit that the application will be placed in a better form for appeal with the entry of the amendments submitted herewith.

Applicants maintain that the present application is currently in condition for allowance. However, the remaining rejections in the final Office Action will be addressed during Applicants’ appeal.

The Examiner is invited to contact the undersigned by telephone if further prosecution of this application and its allowance can thereby be expedited.

Respectfully submitted,

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